688; 14 MICH. L. REV. 525, 526; 15 MICH. L. REV. 92, 606; 16 MICH. L. REV. 179, 462; 17 MICH. L. REV. 195, 280; 18 MICH. L. REV. 162; 19 MICH. L. REV. 232, 456, 458, 577, 669. That the injury in this case is within the law, seems hardly questionable, since as the court so clearly points out, though the burglars did not enter the building which the deceased was protecting, yet his very calling multiplied the chance that he would be near when danger came, and in multiplying the chance, exposure to the risk was increased. He was brought by the conditions of his work within the zone of special danger, and the purpose of the law was to compensate for this, as the court said in *Matter of Leonbruno* v. *Champlain Silk Mills,* 229 N. Y. 470. In *Chicago Dry Kiln Co.* v. *Industrial Board,* 276 Ill. 556, a night watchman was allowed to recover under the Workmen's Compensation Law for injury received in a fight with a trespasser. In *Ohio Building Vault Co.* v. *Industrial Board,* 277 Ill. 96, the death of a night watchman while on duty by being struck on the head was prima facie evidence of assault and arose out of employment so that there might be recovery.

WILLS—CONSTRUCTION OF REPUGNANT CLAUSES—INTENT.—A testator devised and bequeathed certain real and personal property to a woman, to be used and enjoyed by her during her lifetime, with full powers of alienation without limitation or restriction, and upon her decease without issue to revert back to the estate of the testator. In a bill for a construction of the will, *held,* (two justices dissenting), the devisee took an estate in fee, in spite of the direction for disposition at her death. *Gibson* v. *Gibson,* (Mich., 1921), 181 N. W. 41.

In his dissenting opinion, Justice Sharpe cites two Michigan cases which he regards as controlling,—*Robinson* v. *Finch,* 116 Mich. 180, and *Cary* v. *Toles,* 210 Mich. 30. In each of these cases a devise absolute in form was held to be limited to a life estate by a subsequent provision for a gift over on the death of the first taker without issue. The sole question is, of course, which clause in the will shall control. No rule of construction is better settled than that the intention of the testator, as expressed in the will, shall prevail. *King* v. *Melling,* 1 Vent. 231; *Summit* v. *Yount,* 109 Ind. 506; *Lane* v. *Vick,* 3 How. 464. For this purpose the will must be considered as a whole. *Jackson* v. *Hoover,* 26 Ind. 511. But when provisions of the will are plainly repugnant, the testator's intent, the "pole star" of testamentary construction, has not enabled the courts to render decisions that can be easily harmonized. As between two repugnant clauses, some courts have ruled that the latter of the two should prevail on the theory that what the testator writes last in his "last will." *Sherrat* v. *Bentley,* 2 M. & K., 149; *Hamlin* v. *U. S. Express Co.,* 107 Ill. 443; *Hendershot* v. *Shields,* 42 N. J. Eq. 317; JARMAN, WILLS, 6th Ed. 565. In deeds the prior clause controls. *Cutler* v. *Tufts,* 3 Pick. 272. This highly technical rule has been severely criticised, and is never applied, it seems, except as a last resort. SCHOULER, WILLS, par. 474. See 18 MICH. L. REV. 785. The mere position of clauses or words should not be conclusive as against the intention as manifested by the whole instru-

ment. As Chief Justice Marshall said in *Smith* v. *Bell,* 6 Pet. 68, "both clauses are equally the words of the testator, are equally controlling." If then, there is no technical rule to be relied upon, the courts are forced either to declare both of the irreconcilable clauses void or to find that the testator intended one of the clauses to prevail as against the other. Every attempt is made to avoid an intestacy. The most that can be said in an attempt to harmonize the decisions is that in no two wills can the identical language be found. The devise in the instant case is an estate to be used during the devisee's lifetime with full powers of alienation, with a gift over at the death of the devisee. It is said to have been the rule in Virginia for more than a hundred years that such a devise creates an estate in fee. It is known there as the rule of *May* v. *Joynes,* 20 Grat. (Va.) 692. In 1908 this rule was changed by statute, Acts 1908, p. 187, (amending V. C. 1904, Sec. 2418), so as to give effect to the limitation over. See criticism of this statute, 14 VA. L. REG. 161. It appears, however, that where a life estate is expressly given, it will not be converted into a fee because of an absolute power of disposal. *Mansfield* v. *Shelton,* 67 Conn. 390; *Ducker* v. *Burnham,* 146 Ill. 9. In *Jackson* v. *Robins,* 16 Johns. (N. Y.) 537, it is pointed out by Chancellor Kent that after a devise like that in the instant case and *May* v. *Joynes, supra,* the limitation over cannot take effect as a remainder because it is limited after an estate in fee, nor as an executory devise because it can be defeated by an alteration or conveyance of the estate out of which it is limited. See also, *Jones* v. *Jones,* 25 Mich. 401. In the instant case the words taken in their natural sense create an absolute fee. Nothing can be done to control the disposition of such an estate at the death of the devisee.